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Attorneys for Defendant RENTOKIL NORTH AMERICA, INC., a foreign business corporation, dba ALPHA ECOLOGICAL PEST CONTROL, an assumed business name

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

WALTER SUNVISON, AN INDIVIDUAL, Plaintiff, v. RENTOKIL NORTH AMERICA, INC., a foreign business corporation, dba ALPHA ECOLOGICAL PEST CONTROL, an assumed business name, Defendant.	**Case No.:** **(Multnomah County Case No. 16CV32854)** **DEFENDANT RENTOKIL NORTH AMERICA, INC.'S NOTICE OF REMOVAL TO FEDERAL COURT** **[28 U.S.C. §§ 1332, 1441 AND 1446]**

TO: THE CLERK OF THE ABOVE-ENTITLED COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant Rentokil North America, Inc. ("Rentokil") hereby removes this action from the Circuit Court of the State of Oregon, County of Multnomah, to the United States District Court for the District of Oregon pursuant to 28 U.S.C. Sections 1332, 1441(b) and 1446. Rentokil removes this case on the grounds of diversity jurisdiction.

Rentokil's Notice of Removal is based upon and supported by the following:

1. On or about October 6, 2016, Plaintiff commenced this civil action against Rentokil, in the Circuit Court of the State of Oregon for the County of Multnomah ("the State Court Action"). *See* Declaration of Kathryn P. Roberts in Support of Defendant's Notice of Removal ("Roberts Decl."), Exhibit 1 ("Complaint"). Plaintiff purports to bring claims against Rentokil for disability discrimination pursuant to ORS 659A.112 and age discrimination pursuant to ORS 659A.030. *Id.*

2. The Complaint alleges that Rentokil is a "foreign business corporation doing business as Alpha Ecological Pest Control," that is both registered and doing business in Oregon. Complaint ¶ 2. The Complaint alleges that Plaintiff Walter Sunvison ("Plaintiff") is a resident of the State of Oregon. Complaint ¶ 1.

3. On October 11, 2016, Rentokil was served with a copy of the Complaint. *See* Roberts Decl., Exhibit 2. On October 26, 2016, Rentokil was served with summons as to the State Court Action ("Summons"). *Id.*, Exhibit 3.

4. This Notice of Removal is timely because it is filed within 30 days of service of the Complaint. 28 U.S.C. § 1446(b)(2)(B) ("Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal."); *see Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999). Here, Rentokil's registered agent for service of process was served with the Complaint on October 11, 2016, and the Summons on October 26, 2016. Thus, the instant Notice is timely.

5. Removal to this Court is appropriate because the Complaint is pending in the Circuit Court of the State of Oregon for the County of Multnomah, which is located in the District of Oregon, and within the jurisdiction of the Portland Division. *See* 28 U.S.C. § 1441(a).

6. Rentokil's corporate headquarters is located in Pennsylvania, where its officers direct, control, and coordinate Rentokil's activities. *See* Declaration of Lisa Oswald ("Oswald

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Decl.") ¶ 2.

7. This Court has diversity jurisdiction under 28 U.S.C. Section 1332 because Plaintiff and Rentokil are citizens of different states, and because the amount in controversy exceeds $75,000, exclusive of interests and costs.

8. For diversity purposes, an individual is a "citizen" of the state in which he is domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). An individual's domicile is the place he resides with the intention to remain or to which he intends to return. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

9. Plaintiff was, at all times relevant, and still is, a resident of the State of Oregon. *See* Complaint ¶ 1.

10. "A corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business." 28 U.S.C. § 1332(c). The Supreme Court of the United States established the proper test for determining a corporation's principal place of business for purposes of diversity jurisdiction in *Hertz Corporation v. Friend*, 130 S.Ct. 1181 (2010). The Supreme Court concluded that the "'principal place of business' is best read as referring to the place where a corporation's officers direct, control, and coordinate the corporation's activities." *Id.* at 1184. The Court clarified that the principal place of business is the place where the corporation "maintains its headquarters—provided that the headquarters is the actual center of direction, control, and coordination." *Id.* Here, Rentokil is incorporated in Pennsylvania, and has its principal place of business in Pennsylvania. Oswald Decl. ¶ 3. Accordingly, Rentokil is a citizen of the State of Pennsylvania. *Id.*

11. In determining whether the jurisdictional minimum is met, the Court considers all recoverable damages, including compensatory damages, emotional distress damages, punitive damages, statutory penalties, and attorneys' fees. *See Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 347-48 (1977); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150,

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1155-56 (9th Cir. 1998); *Anthony v. Security Pac. Fin. Servs., Inc.*, 75 F.3d 311, 315 (7th Cir. 1996).

12. The amount in controversy is satisfied because Plaintiff's Complaint alleges he is entitled to economic damages of "approximately $44,642.50" and "accru[ing] at an annual rate of $45,275.50," and non-economic damages in the amount of $700,000. Complaint ¶¶ 34, 35, 42, & 43. Plaintiff thus seeks damages well in excess of the jurisdictional limit.

13. The State Court Action, therefore, may be removed to this Court by Rentokil pursuant to 28 U.S.C. Section 1441(a).

14. Rentokil has complied with 28 U.S.C. § 1446(a), and a true and correct copy of all the process, pleadings, or orders in the State Court Action are attached as Exhibits 1, 2, 3, and 4 to the Roberts Declaration. Roberts Decl. ¶¶ 2, 3, 4, & 5.

15. Pursuant to 28 U.S.C. Section 1446(d), Rentokil will file a notice of removal with the Clerk of the Circuit Court, Multnomah County, Oregon, informing the court that this matter has been removed to federal court. A copy of this Notice of Removal, including all supporting exhibits, will be attached to the notice of removal filed with the circuit court. Pursuant to 28 U.S.C. Section 1446(d), a copy of this Notice of Removal is also being served upon Plaintiff.

Dated: November 10, 2016

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

By: /s/ Kathryn P. Roberts
Kathryn P. Roberts, OSB No. 064854

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CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2016, I served the foregoing **DEFENDANT'S NOTICE OF REMOVAL TO FEDERAL COURT** on:

Rebecca Cambreleng, OSB #133209
Cambreleng Law LLC
806 SW Broadway, Suite 1200
Portland, OR 97205
Email: Rebecca@cambreleng.com
Attorney for Plaintiff

■ by **electronic** means through the Court's Case Management/Electronic Case File system, which will send automatic notification of filing to each person listed above.

☐ by **mailing** a true and correct copy to the last known address of each person listed above. It was contained in a sealed envelope, with postage paid, addressed as stated above, and deposited with the U.S. Postal Service in Portland, Oregon.

☐ by causing a true and correct copy to be **hand-delivered** to the last known address of each person listed above. It was contained in a sealed envelope and addressed as stated above.

☐ by causing a true and correct copy to be delivered **via overnight courier** to the last known address of each person listed above. It was contained in a sealed envelope, with courier fees paid, and addressed as stated above.

■ by **e-mailing** a true and correct copy to the last known email address of each person listed above.

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

By: /s/Susan Hunter
Susan Hunter
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